# United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

### Advice Memorandum

DATE: July 26, 1999

TO : Peter B. Hoffman, Regional Director

Region 34

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

177-1683-8750 SUBJECT: Teamsters Local 1150 506-4067-9500

Case 34-CA-8876 524-8387-2550

This case was submitted for advice regarding whether the Employer violated Section 8(a)(5) when its newly elected officers refused to recognize the recently certified Union and repudiated a collective bargaining agreement recently signed by their predecessor officers, and whether it violated Section 8(a)(3) when the new officers discharged one employee on grounds of disloyalty.<sup>1</sup>

#### **FACTS**

## A. Employee Organizational Response to Change in Employer Officers

Teamsters Local 1150 ("Employer") is a labor organization which represents production and maintenance employees at Sikorsky Aircraft in Stratford, Connecticut. On November 6, 1998, 2 after a hotly contested campaign, members of Local 1150 elected as officers a "Teamsters for a Democratic Union" slate -- Ray McMorrin for president, Jeffrey Cederbaum for secretary-treasurer ("Newly Elected Officers") -- in place of long-term incumbents President Peters and Secretary-Treasurer Santa Maria ("Defeated Officers"). 3 During the campaign, the Newly Elected

 $<sup>^{1}</sup>$  The Region's recommendations regarding the propriety of Section 10(j) proceedings will be addressed in a separate memorandum.

<sup>&</sup>lt;sup>2</sup> All dates refer to 1998 unless otherwise noted.

<sup>&</sup>lt;sup>3</sup> The Defeated Officers protested the election results. Teamsters Joint Council 10 dismissed their protests, but on April 30, 1999 the International's General Executive Board reversed this decision, and sustained the allegation that members of the Newly Elected Officers' slate had campaigned improperly on company time and property. A new election was scheduled for the end of July 1999. In the interim, the

Officers announced their intention to terminate the Union's  $[FOIA\ Exemptions\ 6\ and\ 7(C)]$  staff.

When [FOIA Exemptions 6 and 7(C)] heard of the Newly Elected Officers' proposal to terminate them, they unsuccessfully sought representation from another Teamsters local. Then, [FOIA Exemptions 6 and 7(C)] contacted the Employer's attorney, Robert Cheverie, who supplied [FOIA Exemptions 6 and 7(C)] with the name of an OPEIU Local 376 ("Union") organizer. [FOIA Exemptions 6 and 7(C)] obtained Union authorization cards, and distributed them to [FOIA Exemptions 6 and 7(C)], and on December 4 the Union filed a representation petition.

On December 8, Attorney Cheverie signed a stipulated election agreement on behalf of the Employer. Official election notices were posted at three locations in open view at the Employer's facility. Santa Maria alleges that he saw the Newly Elected Officers looking at the notice on several occasions. The election was held on December 18, and the Union won [FOIA Exemptions 6 and 7(C)]. Immediately thereafter, Peters introduced Union representative Sam Martz to the Newly Elected Officers. Peters informed Cederbaum of the election results and that "we" would be putting together a contract for [FOIA Exemptions 6 and 7(C)]. Cederbaum asked for Martz's card, but the Newly Elected Officers did not indicate that it would be necessary for the Union to deal with them personally regarding the negotiations.

Immediately after the election, Santa Maria, Martz and [FOIA Exemptions 6 and 7(C)] discussed a contract. Martz explained that most contracts took 15-30 minutes to negotiate, using modifications to the standard contract. Santa Maria responded they might as well "put the matter to bed," and Martz asked if it would cause Santa Maria any political problems. In Martz's presence, Santa Maria phoned Attorney Cheverie and asked whether it was legal to enter into a Union contract. Martz heard Santa Maria state that any charges would be internal. After telephoning Attorney Cheverie, Santa Maria told Martz that he and Peters could sign the contract.

Newly Elected Officers continue to direct the Employer's affairs.

<sup>&</sup>lt;sup>4</sup> On November 20, another Teamsters local filed a petition with the Region. However, the petition was not docketed.

<sup>&</sup>lt;sup>5</sup> [FOIA Exemptions 6 and 7(C)

[FOIA Exemptions 6 and 7(C)] received a copy of the Union's standard contract, reviewed it with the other [FOIA Exemptions 6 and 7(C)] employees, and they made several modifications. On December 19, Martz delivered a proposed contract to the Employer. Peters phoned Martz with several changes to make it consistent with the Employer's contract with Sikorsky, and Martz agreed. On December 24, Santa Maria, Martz and [FOIA Exemptions 6 and 7(C)] met at a diner and signed the Union contract ("Union Contract").

On January 8, 1999, Leon Rosenblatt, the attorney hired by the Newly Elected Officers to replace Attorney Cheverie as the Employer's counsel, informed Martz that the Employer did not recognize the legitimacy of the Union Contract. He maintained that the Defeated Officers did not have authorization to sign the Union Contract because they had not obtained membership authorization, which only the Newly Elected Officers possessed since their installation on November 30; outgoing officers may only incur up to \$750 in Employer liability; and the unit was inappropriate. Attorney Rosenblatt also accused the Defeated Officers of conspiring with the Union to subvert the LMRDA rights of Local 1150 members. The Employer has consistently refused to recognize the Union and has repudiated the Union Contract.

On March 16, 1999, Martz wrote a letter to Cederbaum challenging the termination of  $[FOIA\ Exemptions\ 6\ and\ 7\ (C)]$  employee  $[FOIA\ Exemptions\ 6\ and\ 7\ (C)]^6$  as a violation of the Union Contract and invoking its grievance/arbitration procedure. Attorney Rosenblatt replied by letter dated March 22 that the Employer would "resist any attempt by the former officials of the Local to control Local 1150 directly, or through surrogates such as yourself" and refused to process the grievance.

#### B. Appointment of a Trustee

The Newly Elected Officers were not sworn in until November 30, apparently due to actions of Santa Maria and Peters in violation of the Employer's by-laws. The installation dispute resulted in intervention by International General Secretary-Treasurer Sever. In a letter dated November 18 addressed to "incumbent secretary-

<sup>&</sup>lt;sup>6</sup> <u>See infra</u> at 5.

<sup>&</sup>lt;sup>7</sup> According to the Employer's bylaws, the Newly Elected Officers anticipated being installed (or sworn in) at the next regular meeting on November 11.

treasurer" Santa Maria, Sever ordered installation of the Newly Elected Officers (as officers-elect), and appointed International Trustee Joseph Padellaro as his personal representative pursuant to the International constitution's power to "oversee transition matters involving the officers who take office on January 1, 1999."

On November 24, Padellaro met with the Defeated and Newly Elected Officers. In a letter addressed to "Secretary/Treasurer" Santa Maria, and copied to "Secretary/Treasurer-Elect" Cederbaum, Padellaro reiterated their agreement that the Newly Elected Officers would be sworn in by November 30. According to Santa Maria, at the November 24 meeting, Padellaro specifically stated in Cederbaum's presence that Padellaro could only make recommendations, that Santa Maria still had "full authority" as the secretary-treasurer until December 31, and that Santa Maria could refuse to comply with any of Padellaro's recommendations. Santa Maria further asserts that Padellaro asked Cederbaum and McMorrin if they understood, and that they nodded affirmatively. Padellaro also asserts that Padellaro told Cederbaum that it was Santa Maria's responsibility to open Sikorsky negotiations in mid-December.

On November 30, the Newly Elected Officers were sworn in. From November 7 through December 31, Cederbaum and McMorrin reported daily to the Employer's facility where they prepared for upcoming negotiations on the Sikorsky contract and read up on their job duties. They officially took full control of the Employer on January 1, 1999.

#### C. Officer Authority under the Constitution and Bylaws

The International Teamsters Constitution provides that all local bylaws must be consistent with the Constitution and that the principal executive officer shall have charge of all labor controversies. A local's executive board is empowered to enter into a collective bargaining agreement and to employ [FOIA Exemptions 6 and 7(C)] workers, and may delegate these powers to any officers subject to ratification by the executive board.

<sup>8</sup> Constitution, Article XXII, Section 1.

<sup>9</sup> Id., Article XXII, Section 2(b).

<sup>&</sup>lt;sup>10</sup> [FOIA Exemptions 6 and 7(C) ].

<sup>11</sup> Id., Article XIV(A)(7).

With respect to transition of power between officers, the Constitution provides that:

The officers-elect shall take office at the end of the term of the incumbent officers regardless of the date of installation, which installation may take place at either the same meeting at which they were elected or, if elected at a meeting, at the next meeting following their election. 12

However, the Employer's bylaws provide that:

This Local Union shall elect its officers by secret ballot not less often than once every three years. Incumbent officers shall continue to perform duties of their offices until their successors have[] been duly elected, qualified and installed. The term of office for any elected officer or Business Agent shall be from January 1st the year following the election to December 31st in the third year following assumption of the duties of such office. 13

. . .

An officer-elect shall be installed at the next regular meeting following the election at which he was elected, provided he has otherwise qualified. In the event the incumbent Secretary-Treasurer or any elected Business Agent shall be defeated in an election, he shall be retained as an employee of the Local Union for period of not less than 90 days for the purpose of assisting and training his successor, without any reduction in salary or other working conditions. 14

#### D. Termination of [FOIA Exemptions 6 and 7(C)]

[FOIA Exemptions 6 and 7(C)] worked for the Employer

<sup>12</sup> Id., Article XXII(4).

 $<sup>^{13}</sup>$  Local 1150 Bylaws, Section XIX(A).

<sup>14</sup> Id., Section XV(F).

].15

In January 1999, [FOIA Exemptions 6 and 7(C)] and the other [FOIA Exemptions 6 and 7(C)] met individually with the Executive Board, and were questioned about their job duties and capabilities. In response to whether [FOIA Exemptions 6 and 7(C)] was loyal to the Newly Elected Officers, [FOIA Exemptions 6 and 7(C)] stated that [FOIA Exemptions 6 and 7(C) "represented" the other [FOIA Exemptions 6 and 7(C)], and that they were hired to serve the Employer's members and to do a job, and that it didn't matter who held office. mid-February, a new trustee told [FOIA Exemptions 6 and 7(C)] and another [FOIA Exemptions 6 and 7(C)] employee that the "guys" were thrilled with them and pleased with their work. Later that month, this same trustee told [FOIA Exemptions 6 and 7(C) he had been "disciplined" for being too friendly with [FOIA Exemptions 6 and 7(C)]. Also in February, [FOIA Exemptions 6 and 7(C)] confronted McMorrin regarding the Employer's failure to remit the [FOIA Exemptions 6 and 7(C)] employees' dues to the Union, and that such conduct violated the Union Contract. 16 McMorrin replied that he was not going to remit the dues, regardless of the Union Contract.

On March 12, [FOIA Exemptions 6 and 7(C)] informed [FOIA Exemptions 6 and 7(C)] that [FOIA Exemptions 6 and 7(C) was being terminated due to "unsatisfactory work." [FOIA Exemptions 6 and 7(C)] was provided no details, but was referred to Attorney Rosenblatt. According to [FOIA Exemptions 6 and 7(C)], [FOIA Exemptions 6 and 7(C)] was terminated due to [FOIA Exemptions 6 and 7(C)] failure to perform [FOIA Exemptions 6 and 7(C)] duties, which was sabotaging the undertakings of the new Executive Board. Specifically, [FOIA Exemptions 6 and 7(C)] failed to provide assistance to the Newly Elected Officers which was within [FOIA Exemptions 6 and 7(C)] knowledge and job duties. Primarily, these instances relate to the Employer's ratification process of the Sikorsky collective-bargaining agreement. For example, [FOIA Exemptions 6 and 7(C)] alleges that [FOIA Exemptions 6 and 7(C)] failed to share information relating to logistics issues involving voter eligibility list and bus transportation, failed to help solve the logistics problems, failed to remind officers of

<sup>&</sup>lt;sup>15</sup> [FOIA Exemptions 6 and 7(C)] participated in the NLRB-conducted election without objection. However, the Employer continues to contend that [FOIA Exemptions 6 and 7(C)].

<sup>&</sup>lt;sup>16</sup> The Employer remitted dues to the Union in January, but claims it did so "inadvertently."

the deadline for announcing dues increases, had a poor phone manner, failed to correct an outgoing message on the answering service, and lacked judgment in forwarding phone calls to officers. Moreover, [FOIA Exemptions 6 and 7(C)] was strongly suspected of being disloyal to the Newly Elected Officers, by passing on restricted-access information to a Defeated Officer, who then used that information as the basis of an internal charge against the Newly Elected Officers. [FOIA Exemptions 6 and 7(C)] admits that [FOIA Exemptions 6 and 7(C)] alleged work deficiencies to [FOIA Exemptions 6 and 7(C)] alleged work deficiencies to [FOIA Exemptions 6 and 7(C)] discharge.

[FOIA Exemptions 6 and 7(C)] claims [FOIA Exemptions 6 and 7(C)] was fully cooperative with the Newly Elected Officers, that most of the deficiencies cited by them in support of [FOIA Exemptions 6 and 7(C)] discharge involved duties performed in the past by the Defeated Officers rather than [FOIA Exemptions 6 and 7(C)] employees (e.g., ratification procedures), that upon request [FOIA Exemptions 6 and 7(C)] attempted to acquire any needed information, and that [FOIA Exemptions 6 and 7(C)] was never informed of any of these deficiencies. Moreover, [FOIA Exemptions 6 and 7(C)] states that during the 1998 officers' campaign, [FOIA Exemptions 6 and 7(C)] did not actively campaign on behalf of the Defeated Officers.

On March 18, 1999, the Union filed the instant charge against the Employer.  $^{17}$ 

#### ACTION

We conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) by repudiating the Union Contract, and violated

].

<sup>&</sup>lt;sup>17</sup> Attorney Cheverie signed an amended charge on behalf of the Union. [FOIA Exemptions 6 and 7(C)]

Section 8(a)(3) by terminating [FOIA Exemptions 6 and 7(C)] in retaliation for engaging in protected conduct.

# A. The Employer is Bound by the Defeated Officers' Recognition of the Union and their Agreement to the Contract with the Union

In Opportunity Homes, 18 the Board agreed with the ALJ that "it is well established that an employer is bound by the acts of those of its officials who are in charge of the day-to-day operations of its facility and who possess actual authority, or at the very least apparent authority, with respect to labor relations matters." Moreover, in Richmond Toyota, 19 the Board held that a vice president-general manager who was in charge of day-to-day operations and who was the highest ranking official at the facility possessed at least apparent authority to recognize a union, regardless of his personal responsibility for labor relations matters.

According to the express provisions of the Teamsters' International Constitution, which supercedes any inconsistent Local 1150 Bylaw, 20 the Newly Elected Officers could not take office until the end of the incumbent Defeated Officers' terms of office, regardless of when the Newly Elected Officers were installed. 21 According to Local 1150's Bylaws, their terms extended until December 31st. 22 Even if the Defeated Officers did not actually possess authority to deal with representational matters raised by the Union, the Union could have reasonably believed that they did based on Trustee Padellaro's statement that Santa Maria retained "full authority" until December 31, and from the fact that the Defeated Officers continued to exercise

 $<sup>^{18}</sup>$  Opportunity Homes, Inc., 315 NLRB 1210, 1217 (1994), enf'd, 101 F.3d 1515 (6<sup>th</sup> Cir. 1996) (Board upheld ALJ's determination that the administrator for residential care home for the disabled possessed actual and apparent authority to orally recognize the union).

<sup>&</sup>lt;sup>19</sup> Richmond Toyota, 287 NLRB 130, 131 (1987).

<sup>20</sup> See supra at 4 n.8.

<sup>21</sup> See supra at 4 n.12.

<sup>22 &</sup>lt;u>See supra</u> at 4 n.13. The Trustee did not affect the Defeated Officers' authority, as his purpose was simply to "oversee transition matters," such as the delay in installation of the Newly Elected officers. See supra at 3.

their authority without objection or interference from the executive board or from the Newly Elected Officials.

Apparent authority of an agent to act is "created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question." <sup>23</sup> Thus, the principal must either intend that another believe the agent is authorized to act for him, or should realize that a third party is likely to believe that the agent is authorized based on the principal's conduct. <sup>24</sup>

Applying this standard, the Defeated Officers possessed the apparent authority to recognize, bargain with, and enter into a contract with the Union. Initially, we note that the Defeated Officers were the highest ranking officers of the Employer on site, and they continued to exercise day-to-day responsibilities during that time period, while the Newly Elected Officers prepared for upcoming negotiations of the Sikorsky contract and read up on their job duties. Under Richmond Toyota, these factors alone warrant a conclusion that they possessed apparent authority to recognize, bargain with, and sign an agreement with the Union. Furthermore, it was reasonable for the Union to assume that the Defeated Officers possessed authority to sign a contract, and was not acting ultra vires, based on the representation of Santa Maria that he was able to do so, after consulting with the Employer's attorney regarding his authority.

Finally, the Union could reasonably have concluded that the Defeated Officers possessed the authority to negotiate a contract based on the lack of objection to or interference from Local 1150's executive board. The International's Constitution provides that locals may employ [FOIA Exemptions 6 and 7(C)] workers, and are empowered to enter into collective bargaining agreements. Moreover, a local's executive board may delegate these powers to officers, subject to ratification.  $^{26}$ 

 $<sup>\</sup>frac{23}{82-83}$  Service Employees Union Local 87 (West Bay), 291 NLRB 82, 82-83 (1988).

<sup>24 &</sup>lt;u>Id.</u> at 83. <u>Accord Allegany Aggregate</u>, 311 NLRB 1165, 1165 (1993); Dentech Corp., 294 NLRB 924, 925-26 (1989).

 $<sup>^{25}</sup>$  See supra at 4 nn.9-10.

<sup>&</sup>lt;sup>26</sup> See supra at 4 n.11.

Local 1150's executive board must have been aware of the [FOIA Exemptions 6 and 7(C)] staff's quest for union representation, yet it allowed the Defeated Officers to handle labor relations with the [FOIA Exemptions 6 and 7(C)] without interference or objection. Indeed, the entire local must have been aware of [FOIA Exemptions 6 and 7(C)] labor relations situation since [FOIA Exemptions 6 and 7(C)] job retention was a campaign issue. Further, the executive board must have been apprised of [FOIA Exemptions 6 and 7(C) | initial election petition requesting Teamsters representation and, when the Board rejected their representation petition, their petition for Union representation, both of which were openly posted; the Defeated Officers' agreement to an election; as well as the actual election and certification of the Union. Moreover, it was the Local's own attorney, Cheverie, who suggested that [FOIA Exemptions 6 and 7(C)] contact the Union and assured one of the Defeated Officers that he possessed the authority to enter into a collective-bargaining agreement.

In spite of these events, there is no evidence that the Local's executive board attempted to intervene, or to object to the actions taken by the Defeated Officers. For example, the board did not object to the Union election, the Union's certification, or to the Contract.<sup>27</sup>

In light of the fact that the executive board must have been aware of [FOIA Exemptions 6 and 7(C)] organizing efforts as well as the Defeated Officers' agreement to hold an election and recognize the Union, the executive board's lack of intervention, the Employer's attorney's assurance that the Defeated Officers could lawfully enter into a contract, and the fact that the Defeated Officers continued day-to-day operation of the Local, it was reasonable for the Union to believe that the Defeated Officers possessed the authority to enter into a collective-bargaining agreement with [FOIA Exemptions 6 and 7(C)].

Finally, even if <u>arguendo</u> the Defeated Officers lack actual and apparent authority to hold an election, recognize the Union, and enter into an contract, the executive board's lack of objection alternatively warrants the conclusion that

<sup>27</sup> Likewise, the Newly Elected Officers were apprised of the fact that the Defeated Officers had agreed to a Union election, and had entered into a contract with the Union. They, too, failed to object until they gained day-to-day control of the local in January.

it ratified those actions. 28 The board had adequate time to reject their actions, as the election agreement was dated December 18<sup>th</sup>, the election was held December 24<sup>th</sup>, and the Contract was also dated December 24<sup>th</sup>. Thus, for the last two weeks of December, the board would have been on notice that the Defeated Officers had agreed to a Union election, and, since the Employer negotiates contracts for its members, should have realized that [FOIA Exemptions 6 and 7(C) | would then seek a written contract through their Union. The board then had a week to disavow the Union recognition and to repudiate the Contract after it was signed, but made no move to do so. Therefore, we would further argue that the Employer affirmed the actions of the Defeated Officers. Accordingly, the Employer's refusal to recognize the Union and its repudiation of the Union Contract violated Section 8(a)(5).

### B. [FOIA Exemptions 6 and 7(C)] was Terminated for Engaging in Protected Conduct

When a union acts in the capacity of an employer, it violates Section 8(a)(1) and (3) if it discharges an employee for seeking outside representation. In order to find a violation, the Board requires proof that the "discharges were motivated by union animus and that the conduct would have the foreseeable effect of either encouraging or discouraging union membership." 30

In <u>Retail Clerks</u>, <sup>31</sup> the Board refused to find either animus, or union encouragement or discouragement, where employees of a union were discharged for attempting to "effect a change in the top management of their Employer Union." According to the Board:

[A]n employee of a union, like any other employee, has no protected right to engage in activities

<sup>&</sup>lt;sup>28</sup> A prior act is ratified when it is affirmed by the principal, which may be inferred from a failure to repudiate the act. Dentech, 294 NLRB at 926 (citations omitted).

Butchers Union Local 115 (Ernest S. Cerrelli), 209 NLRB 806, 809 (1974).

<sup>30 &</sup>lt;u>Retail Clerks Union Local 770 (Carl A. Palmer)</u>, 208 NLRB 356, 356 (1974).

 $<sup>^{31}</sup>$  Id. at 357.

designed solely for the purpose of influencing or producing changes in the management hierarchy.<sup>32</sup>

In that case, employees of a union had openly supported the opponent of the incumbent president and were members of their employer's labor organization. The Board explicitly distinguished their conduct from instances where a union's employees were engaged in organizing in order to seek independent representation, or to redress employee grievances.<sup>33</sup>

In consonance with the distinction made in Retail Clerks, numerous Board decisions have concluded that employees of a union engaged in protected conduct when they sought changes in management of the union in order to redress grievances, organize themselves, or to alter their employment conditions. For example, in Carpenters, the Board found that an employee who questioned the financial activities of the incumbent union official was engaged in protected activity because his actions were intended to protect the integrity of the union.<sup>34</sup> The Board expressly distinguished this conduct from Butchers, where the employee opposed an incumbent union official's reelection from a desire to assume his position. More recently, in Operating Engineers, 35 the Board affirmed the ALJ's conclusion that a union's office manager was engaged in protected conduct when she attempted to raise clericals' wages and to organize the clerical staff, and that her discharge was unlawful as it was due to these activities. Likewise, in Bartenders, 36 the ALJ found that union employees who opposed union management personnel in order to protest their unfair labor practices and sought independent union representation were engaged in protected conduct, contrasting the situation to Retail Clerks and Butchers, where management changes were sought

<sup>&</sup>lt;sup>32</sup> Id.

<sup>33 &</sup>lt;u>Id.</u> at 357. <u>Accord Butchers</u>, 209 NLRB at 810-11 (distinguishing cases where union employees sought to redress grievances or to organize themselves from case where a union employee opposed a union official's reelection because the union employee wanted the official's job).

<sup>34 &</sup>lt;u>See Carpenters Local No. 35 (Klaus Martin)</u>, 264 NLRB 795, 798 n.18 (1982).

Operating Engineers Local 3 (Katherine Bellinger), 324 NLRB 1183, 1190 (1997).

<sup>36</sup> Bartenders Local 19, 240 NLRB 240, 252 (1979).

without any connection to organizing or employee grievances.<sup>37</sup>

Although the Employer contends that [FOIA Exemptions 6 and 7(C) was discharged due to [FOIA Exemptions 6 and 7(C)] opposition to the Newly Elected Officers, we conclude that as in Carpenters and Bartenders (and unlike Retail Clerks), [FOIA Exemptions 6 and 7(C)] opposition constituted protected conduct under the Act. Although [FOIA Exemptions 6 and 7(C)] did not actively campaign against the Newly Elected Officers, [FOIA Exemptions 6 and 7(C)] opposition to their election stemmed from their stated intention during the campaign to fire [FOIA Exemptions 6 and 7(C)] staff. Clearly, [FOIA Exemptions 6 and 7(C)] actions to seek mutual aid from the other [FOIA Exemptions 6 and 7(C)] in order to protect their jobs and working conditions constituted protected conduct. Moreover, unlike in Retail Clerks, [FOIA Exemptions 6 and 7(C) and FOIA Exemptions 6 and 7(C) fellow [FOIA Exemptions 6 and 7(C)] openly attempted to organize, ultimately filing two representation petitions with the Board.

We conclude, in agreement with the Region, that [FOIA Exemptions 6 and 7(C)] was actually discharged due to [FOIA Exemptions 6 and 7(C)] efforts to organize [FOIA Exemptions 6 and 7(C)] and obtain a Union contract. One of the first actions of the Newly Elected Officers when they assumed office was to repudiate the Contract and refuse to recognize the Union. Further, even though the Newly Elected Officers' had announced their intention to discharge all [FOIA Exemptions 6 and 7(C)], they did not carry out their threat. Instead, only [FOIA Exemptions 6 and 7(C)] was discharged, and the Employer waited almost three months after assuming office to do so. Significantly, during the interval between the election of the Newly Elected Officers and the date they assumed control of the Local, [FOIA Exemptions 6 and 7(C)] was instrumental in convincing [FOIA Exemptions 6 and 7(C)] to obtain Union representation and a Union contract. Adding to the inference of anti-Union animus, [FOIA Exemptions 6 and 7(C)] was allegedly discharged for not performing tasks that [FOIA Exemptions 6 and 7(C)] had never before performed

<sup>37</sup> Accord Caterpillar, Inc., 321 NLRB 1178, 1179 (1997) (Board held that employees engaged in protected conduct when they protested employer official who had a direct impact on their working conditions); Hoytuck Corp., 285 NLRB 904, 904 n.3 (1987) (same, distinguishing Retail Clerks on grounds that in Retail Clerks the employees' campaign for changes in the executive hierarchy were unrelated to working conditions).

(e.g., ratification procedures), and [FOIA Exemptions 6 and 7(C)] was never counseled about [FOIA Exemptions 6 and 7(C)] alleged poor performance or given an opportunity to improve.

In sum, the Newly Elected Officers' blatant anti-Union animus as evidenced by their repudiation of the Union and Contract, their pretextual rationale for discharging [FOIA Exemptions 6 and 7(C)], the fact that [FOIA Exemptions 6 and 7(C)] discharged, and the fact that [FOIA Exemptions 6 and 7(C)] opposition to the Newly Elected Officers and [FOIA Exemptions 6 and 7(C)] attempts to obtain independent representation were protected due to the threat to terminate [FOIA Exemptions 6 and 7(C)] and the other [FOIA Exemptions 6 and 7(C)], warrant the conclusion that [FOIA Exemptions 6 and 7(C)] was discharged due to [FOIA Exemptions 6 and 7(C)] Union activities.

#### CONCLUSION

For the foregoing reasons, we conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) by repudiating the Union Contract, and violated Section 8(a)(3) by terminating [FOIA Exemptions 6 and 7(C)] in retaliation for engaging in protected conduct.

B.J.K.